

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2021, as he no longer had residuals or disability causally related to his accepted August 24, 2007 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 28, 2007 appellant, then a 47-year-old temporary seasonal maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2007 he injured his back when he slipped and fell while in the performance of duty. OWCP accepted the claim for a lumbar sprain. Appellant received continuation of pay until October 13, 2007, when his temporary, seasonal position ended. OWCP paid him wage-loss compensation for total disability beginning October 14, 2007.

On November 7, 2008 OWCP expanded the acceptance of the claim to include a permanent aggravation of lumbar degenerative disc disease.

By decision dated February 18, 2015, OWCP reduced appellant's wage-loss compensation, effective that date, based on its finding that he had the capacity to earn wages as a motel desk clerk.⁴

On August 21, 2020 OWCP requested that appellant submit a reasoned report from his attending physician addressing whether he had continued physical findings of his accepted lumbar sprain and permanent aggravation of lumbar intervertebral disc degeneration.

A September 29, 2020 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a synovial cyst at L4-5 secondary to facet arthrosis, severe bilateral facet arthrosis at L5-S1, and multilevel disc bulging.

In an initial evaluation dated October 21, 2020, Dr. Christian J. Gaffney, an orthopedic surgeon, discussed appellant's history of a low back injury at work around 2007 and subsequent symptoms of low back pain and bilateral sciatica. He related that appellant complained primarily of left knee pain and reduced motion and was concerned about an MRI scan showing a synovial cyst at L4-5. Dr. Gaffney noted that appellant worked as a rancher. He diagnosed a synovial cyst. Dr. Gaffney advised that, while appellant had a history of back pain after an employment injury,

³ Docket No. 10-1012 (issued November 9, 2010), *Erratum*, Docket No. 10-1012 (issued January 6, 2011); Docket No. 11-1015 (issued March 16, 2012).

⁴ By decision dated January 6, 2011, the Board reversed an August 27, 2009 OWCP decision, which found that appellant's actual earnings as a seasonal visitor use assistant fairly and reasonably represented his wage-earning capacity. *Id.*

his MRI scan was “relatively reassuring” and found that his knee symptoms were unrelated to the cyst.

On November 19, 2020 OWCP referred appellant to Dr. Thomas Jetzer, who is Board-certified in occupational medicine, for a second opinion examination. In statements of accepted facts (SOAF) it indicated that it had accepted lumbar sprain and a permanent aggravation of lumbar degenerative disc disease. OWCP instructed Dr. Jetzer to use the SOAF as the factual framework for his opinion.

In a report dated December 30, 2020, Dr. Jetzer indicated that appellant owned and worked on a cattle ranch with 165 cattle. He provided his review of the medical records and the results of diagnostic testing. On examination Dr. Jetzer found a negative straight leg raise without sciatic pain and a normal gait. He diagnosed progressive degenerative lumbar disc disease “consistent with natural aging.” Dr. Jetzer opined that appellant had sustained only a lumbar strain as a result of his employment injury and that the current findings, including facet arthrosis, were related to his age and obesity. He advised that appellant had a cyst causing left leg pain that was unrelated to his employment injury. Dr. Jetzer found that appellant had recovered from his employment injury, noting that the findings on examination were benign and that there were no radicular findings. He opined that appellant was not disabled due to the accepted employment-related conditions, but instead due to age. Dr. Jetzer found that appellant required no further treatment due to the injury. He determined that appellant could perform sedentary employment.

On March 5, 2021 OWCP notified appellant of its proposed termination of his wage-loss compensation and medical benefits as the weight of the evidence established that he no longer had any employment-related disability or need for further medical treatment due to his accepted employment injury. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed termination.

By decision dated April 6, 2021, OWCP terminated appellant’s wage-loss compensation and medical benefits effective that date. It found that Dr. Jetzer’s opinion represented the weight of the evidence and established that he had no further disability or residuals of his accepted employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.⁵ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

⁵ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

⁶ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁷ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁹

ANALYSIS

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2021.

On November 19, 2020 OWCP referred appellant to Dr. Jetzer for a second opinion examination. It provided a SOAF indicating that it had accepted the claim for lumbar sprain and a permanent aggravation of lumbar degenerative disc disease. In a December 30, 2020 report, Dr. Jetzer opined that appellant had sustained only a lumbar strain due to his accepted employment injury. He advised that appellant's degenerative disc disease of the lumbar spine was due to aging and that the current findings, including facet arthrosis, resulted from his age and obesity.

The Board finds that Dr. Jetzer's opinion is inconsistent with the SOAF. OWCP accepted that appellant sustained a permanent aggravation of lumbar degenerative disc disease as well as lumbar strain due to the accepted August 24, 2007 employment injury. It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.¹⁰

OWCP's procedures and Board precedent dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹¹

Consequently, Dr. Jetzer did not rely on the SOAF as a framework in reaching his conclusions. The Board, thus, finds that Dr. Jetzer's report of diminished probative value.¹² Accordingly, the Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 6, 2021.

⁸ *E.J.*, Docket No. 20-0013 (issued November 19, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁹ *A.J.*, Docket No. 18-1230 (issued June 8, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹⁰ *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). *See also* *D.C.*, Docket No. 21-0780 (issued December 22, 2021); *Paul King*, 54 ECAB 356 (2003).

¹² *Id.*

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 6, 2021.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 6, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board